

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI,

Respondent

v.

MITCHELL BENN.

Appellant

DOCKET NUMBER WD72146

DATE: May 17, 2011

Appeal From:

Circuit Court of Ray County, MO
The Honorable Larry Dale Harman, Judge

Appellate Judges:

Division One
Gary D. Witt, P.J., James Edward Welsh, and Alok Ahuja, JJ.

Attorneys:

Kent Denzel, Columbia, MO

Counsel for Appellant,

Attorneys:

Jayne T. Woods, Jefferson City, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

STATE OF MISSOURI, Respondent, v. MITCHELL BENN, Appellant

WD72146

Ray County

Before Division One Judges: Witt, P.J., Welsh, and Ahuja, JJ.

Mitchell Benn appeals the circuit court's judgment convicting him of one count of child molestation in the first degree and three counts of statutory sodomy in the first degree. He contends that the evidence was insufficient to convict him of child molestation in the first degree and two of the counts of statutory sodomy in the first degree. He also contends that the circuit court plainly erred when it permitted a Children's Division worker to testify about her opinions concerning Benn's statements to her during an investigative interview.

AFFIRMED.

Division One holds:

(1) Substantial evidence was presented at trial that Benn's penis touched the victim. The fact that a piece of cloth was between his penis and the child is inconsequential. The evidence, therefore, was sufficient for a jury to find Benn guilty of child molestation in the first degree.

(2) The child's description of how Benn's "wiener" felt before and after she applied the lotion provided the jury with a reasonable inference of skin-to-skin contact and was sufficient to establish hand-to-genital contact. Moreover, regardless whether a towel was between the victim's hand and Benn's penis when she applied the lotion, her act of applying the lotion still "involved" her hand. Thus, this action met the statutory definition of deviate sexual intercourse. The evidence, therefore, was sufficient for a jury to find Benn guilty on Count I of statutory sodomy in the first degree.

(3) It was reasonable for the jurors to infer that the victim's reference to her "private spot," or "bad spot," coupled with her action of pointing to her genital region between her legs and circling the same area on an anatomical drawing, indicated that Benn licked her genitals. The evidence, therefore, was sufficient for a jury to find Benn guilty on Count III of statutory sodomy in the first degree.

(4) Benn's claim that the circuit court plainly erred when it permitted Stephanie Kissick, a children's service worker for the Carroll County Children's Division, to testify about her opinions concerning Benn's statements to her during an investigative interview does not facially establish substantial grounds for believing that he has been a victim of manifest injustice. Thus, we need not proceed with any Rule 30.20 plain error review.

Opinion by James Edward Welsh, Judge

May 17, 2011

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